

§ 3802.0-2

43 CFR Ch. II (10-1-06 Edition)

§ 3802.0-2 Objectives.

The objectives of this subpart are to:

(a) Allow mining claim location, prospecting, and mining operations in lands under wilderness review pursuant to the U.S. Mining Laws, but only in a manner that will not impair the suitability of an area for inclusion in the wilderness system unless otherwise permitted by law; and

(b) Assure management programs that reflect consistency between the U.S. Mining Laws, and other appropriate statutes.

§ 3802.0-3 Authority.

These regulations are issued under the authority of sections 302 and 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1733, and 1782).

§ 3802.0-5 Definitions.

As used in this subpart, the term:

(a) *Reclamation*, which shall be commenced, conducted and completed as soon after disturbance as feasible without undue physical interference with mining operations, means:

(1) Reshaping of the lands disturbed and affected by mining operations to the approximate original contour or to an appropriate contour considering the surrounding topography as determined by the authorized officer;

(2) Restoring such reshaped lands by replacement of topsoil; and

(3) Revegetating the lands by using species previously occurring in the area to provide a vegetative cover at least to the point where natural succession is occurring.

(b) *Environment* means surface and subsurface resources both tangible and intangible, including air, water, mineral, scenic, cultural, paleontological, vegetative, soil, wildlife, fish and wilderness values.

(c) *Wilderness Study Area* means a roadless area of 5,000 acres or more or roadless islands which have been found through the Bureau of Land Management wilderness inventory process to have wilderness characteristics (thus having the potential of being included in the National Wilderness Preservation System), and which will be subjected to intensive analysis through the Bureau's planning system, and

through public review to determine wilderness suitability, and is not yet the subject of a Congressional decision regarding its designation as wilderness.

(d) *Impairment of suitability for inclusion in the Wilderness System* means taking actions that cause impacts, that cannot be reclaimed to the point of being substantially unnoticeable in the area as a whole by the time the Secretary is scheduled to make a recommendation to the President on the suitability of a wilderness study area for inclusion in the National Wilderness Preservation System or have degraded wilderness values so far, compared with the area's values for other purposes, as to significantly constrain the Secretary's recommendation with respect to the area's suitability for preservation as wilderness.

(e) *Mining claim* means any unpatented mining claim, millsite, or tunnel site authorized by the U.S. mining laws.

(f) *Mining operations* means all functions, work, facilities, and activities in connection with the prospecting, development, extraction, and processing of mineral deposits and all uses reasonably incident thereto including the construction and maintenance of means of access to and across lands subject to these regulations, whether the operations take place on or off the claim.

(g) *Operator* means a person conducting or proposing to conduct mining operations.

(h) *Authorized officer* means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described in this subpart.

(i) *Wilderness inventory* means an evaluation conducted under BLM wilderness inventory procedures which results in a written description and map showing those lands that meet the wilderness criteria established under section 603(a) of the Federal Land Policy and Management Act.

(j) *Manner and degree* means that existing operations will be defined geographically by the area of active development and the logical adjacent (not necessarily contiguous) continuation of

the existing activity, and not necessarily by the boundary of a particular, claim or lease, and in some cases a change in the kind of activity if the impacts from the continuation and change of activity are not of a significantly different kind than the existing impacts. However, the significant measure for these activities is still the impact they are having on the wilderness potential of an area. It is the actual use of the area, and not the existence of an entitlement for use, which is the controlling factor. In other words, an existing activity, even if impairing, may continue to be expanded in an area or progress to the next stage of development so long as the additional impacts are not significantly different from those caused by the existing activity. In determining the manner and degree of existing operations, a rule of reason will be employed.

(k) *Valid existing right* means a valid discovery had been made on a mining claim on October 21, 1976, and continues to be valid at the time of exercise.

(l) *Undue and unnecessary degradation* means impacts greater than those that would normally be expected from an activity being accomplished in compliance with current standards and regulations and based on sound practices, including use of the best reasonably available technology.

(m) *Substantially unnoticeable* means something that either is so insignificant as to be only a very minor feature of the overall area or is not distinctly recognizable by the average visitor as being manmade or man-caused because of age, weathering or biological change.

§ 3802.0-6 Policy.

Under the 1872 Mining Law (30 U.S.C. 22 *et seq.*), a person has a statutory right consistent with other laws and Departmental regulations, to go upon the open (unappropriated and unreserved) public lands for the purpose of mineral prospecting, exploration, development, and extraction. The Federal Land Policy and management Act requires the Secretary to regulate mining operations in lands under wilderness review to prevent impairment of the suitability of these areas for inclu-

sion in the wilderness system. However, mining operations occurring in the same manner and degree that were being conducted on October 21, 1976, may continue, even if they are determined to be impairing. Mining activities not exceeding manner and degree shall be regulated only to prevent undue and unnecessary degradation of public lands.

§ 3802.0-7 Scope.

(a) These regulations apply to mining operations conducted under the United States mining laws, as they affect the resources and environment or wilderness suitability of lands under wilderness review.

(b) These regulations apply to means of access across public land for the purpose of conducting operations under the U.S. mining laws.

§ 3802.1 Plan of operations.

An approved plan shall include appropriate environmental protection and reclamation measures selected by the authorized officer that shall be carried out by the operator. An operator may prepare and submit with a plan measures for the reclamation of the affected area.

§ 3802.1-1 When required.

An approved plan of operations is required for operations within lands under wilderness review prior to commencing:

(a) Any mining operations which involve construction of means of access, including bridges, landing areas for aircraft, or improving or maintaining such access facilities in a way that alters the alignment, width, gradient size, or character of such facilities;

(b) Any mining operations which destroy trees 2 or more inches in diameter at the base;

(c) Mining operations using tracked vehicles or mechanized earth moving equipment, such as bulldozers or backhoes;

(d) Any operations using motorized vehicles over other than *open use areas and trails* as defined in subpart 6292 of this title, *off-road vehicles*, unless the use of a motorized vehicle can be covered by a temporary use permit issued under part 2930 of this chapter;